No. 15,813

United States Court of Appeals
For the Ninth Circuit

MANUEL C. BLAS, and THE ESTATE OF JOSE MARTINEZ TORRES,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Upon Appeal from the District Court of Guam.

BRIEF OF APPELLANTS.

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BRIEF OF APPELLANTS.

OPINIONS BELOW.

The opinion of the District Court in Cause Number 15,813 is found in the Transcript of the Record at pages 116 and 117.

JURISDICTION.

Jurisdiction is based on U.S.C., Title 48, Sec. 1424. Appeal to the court is taken pursuant to U.S.C., Title 28, Sec. 1291.

STATEMENT OF FACTS.

This is an action in condemnation brought by the United States of America for the acquisition of 368,-

561 square meters of land in the Municipality of Barrigada, three (3) tracts of which are the subject matter on appeal, namely:

1. Tract 2, part of Lot 1074, consisting of 40,104 square meters, formerly owned by appellant, Manuel C. Blas.

2. Tract 4, part of Lot 1069, consisting of 74,126 square meters and Tract 15, Lot 1075, consisting of 16,480 square meters, formerly owned by the heirs of Jose Martinez Torres, deceased.

These three tracts are adjacent to one another and have the same productivity, accessibility, uses and values. Prior to World War II the Municipality of Barrigada was principally a farming region, but there were about 800 permanent residents in the Municipality. A portion of Tract 2, part of Lot 1074, designated as Lot 1074-3, was occupied by the Police Headquarters of the Municipality of Barrigada before the war.

In the Municipality of Barrigada before the war, there were two fairly large schoolhouses, a Catholic Church, two stores, two coral highways and residences that spread all over the area, but most of these were destroyed in the course of construction of Post War Navy installations.

Sometime in 1945, the Naval Government of Guam sub-divided the present Barrigada Village and built some houses to rehabilitate the needy. The more fortunate ones built their own houses, and stores. The church in the area within the perimeter of the three

tracts was built by the parishioners. Then on April 11, 1949, a Declaration of Taking was filed concerning 380,438 square meters of land, more or less, in the Municipality of Barrigada, but the area was later reduced to 368,561 square meters as per amended Declaration of Taking dated May 1, 1952. On the date of Taking these tracts were already a residential and a commercial area.

Out of these 368,561 square meters, 128,710 square meters formerly belonged to the appellant herein.

The Declaration of Taking was originally filed with the then Superior Court of Guam, but was later transferred to the District Court of Guam. The case was tried by a jury on April 8, 1957, and on the same day the District Court of Guam issued an order granting a motion of appellee for directed verdict. On April 12, a Deficiency Judgment was filed on Guam. On April 22, 1957, the District Court denied appellants' motion to set aside Order and Judgment for New Trial. Hence this appeal.

QUESTIONS PRESENTED.

Was enough evidence produced relating to the value of the land to allow the question to be presented to the jury for decision?

Did the court direct a verdict which prescribed values based on agricultural land when, in fact, the property was residential and commercial?

Should the property have been valued as of April 11, 1949 the date of the Declaration of Taking, or some earlier date?

SPECIFICATION OF ERRORS.

1. The trial court erred in not submitting the case to the jury, there being substantial and relevant facts presented for the jury to decide.

2. The trial court erred in considering merely the sales of agricultural lands to support the order and judgment, the lots in question being admitted by the parties to be residential and commercial at the time of the taking.

3. The trial court erred in not evaluating the testimony of the expert witnesses presented by the appellants and the testimony of the other appellants' witnesses concerning the value of lands which are close to the lots in question.

4. The trial court erred in that the order and judgment are against the weight of or contrary to the evidence.

5. The trial court erred in that the amount awarded in this judgment is not the fair value or just compensation of the lots in question on the date of vesting, that is April 11, 1949.

6. That the trial court erred in directing the verdict in that the credibility of the witnesses and the weight of their testimony are for the jury and not for the court to determine.

SUMMARY.

The value of property in a condemnation suit is a question of fact for the jury to decide, and it should not be taken from the jury if there is conflicting evidence presented. If a motion for a directed verdict is made, the evidence must not be weighed by the court, and must be considered in the light most favorable to the party against whom the motion is made.

Substantial and relevant evidence pertaining to the value of the property and the classification of the property were submitted by the appellant and therefore the matter should have been submitted to the jury.

The property should have been evaluated as of the date of the Declaration of Taking, or April 1949, a time when both the appellants and appellee conceded that is was classed as residential and commercial property.

ARGUMENT.

I.

THE VALUE OF PROPERTY SUBJECT TO A CONDEMNATION SUIT IS A MATTER OF FACT WHICH SHOULD BE SUBMITTED TO THE JURY WHEN SUBSTANTIAL AND RELEVANT EVIDENCE OF VALUE HAS BEEN PRODUCED.

A. The right to receive just compensation for property taken for public use is a right guaranteed by our most sacred legal tradition, and all procedural safeguards of that right should be zealously followed.

The case at hand arose through the exercise of the power of eminent domain by a governmental agency. Both the due process clauses of the federal constitu-

tion, *United States Constitution, Amends.* 5, 14, and the "Bill of Rights" of the *Organic Act of Guam,* August 1, 1950, c. 512, Sec. 5e, 5f, 48 U.S.C. Section 14,216 provides that private property cannot be taken for a public use without due process of law and without the payment of just compensation.

The right of eminent domain, which predates the very existence of our country, was and is considered to be superior to all rights of private property. The provisions guaranteeing just compensation and due process of law such as are found in United States Constitution and in the Organic Act of Guam *supra* are not grants of power but are limitations on the exercise of the use of eminent domain. *United States v. A Certain Tract or Parcel of Land in Chatham Co., Ga.,* 44 F. Supp. 712 (S.D. Ga. 1942). Thus, the founders of our country, in effect, started a tradition of zealous protection, both procedurally and financially, of the rights of private ownership. This tradition was followed in the drafting of the Organic Act of Guam.

B. The value or just compensation of the property subject to condemnation is a question of fact for the jury to determine.

In condemnation proceedings in the federal courts, the general rule prevails that while questions of law are reserved for the court, if there is conflicting evidence, questions of fact relating to valuation and assessment of damages should be submitted to the jury. *Karlson v. United States,* 82 F. 2d 330 (8th Cir. 1946). The same general rule applies in determining

the highest and best use for the property. *Atlantic Coast Line Ry. Co. v. United States,* 132 F. 2d 959 (5th Cir. 1943). It is also true that the general rule that it is for the jury to determine the credibility and the weight to be accorded the evidence presented applies in condemnation proceedings. *United States v. Meyer,* 113 F. 2d 387 (7th Cir. 1940).

C. If conflicting evidence is presented relating to a question of fact, it is for the jury to determine the issue after it has weighed the evidence, and it is error for the court to direct a verdict in the face of conflicting evidence.

The rule is well settled that in civil cases tried by a jury, questions of fact are for the jury to decide, and not for the court. *First National Bank v. United States,* 102 F. 2d 907 (7th Cir. 1939), cert. denied 59 Sup. Ct. 1038, 307 U. S. 641, 83 L. Ed. 1521. Therefore, if there has been evidence submitted by both parties, it is for the jury to determine the facts established, and it is error to direct a verdict, even though there may seem to be a decided preponderance of the evidence for the moving party. *United States Fidelity and Guaranty Co. v. Blake,* 285 Fed. 449 (1923), cert. denied, 262 U. S. 748, 43 Sup. Ct. 523, 67 L. Ed. 1213 (1922).

In entertaining a motion for a directed verdict, the court must not weigh the evidence. The weight as well as the credibility of witnesses are matters for the jury, *Galloway v. United States,* 130 F. 2d 467 (9th Cir. 1942); *Johnson v. Dierks Lumber and Coal Co.,* 130 F. 2d 115 (8th Cir. 1942), and where a case fairly depends upon the weight or effect of the testi-

mony, it is a matter for the consideration of that body, under proper instructions as to the principles of law involved. *Delk v. St. Louis and S. F. Ry. Co.,* 220 U.S. 580, 55 L. Ed. 590, 31 Sup. Ct. 617 (1911); *Mutual Benefit Health and Accident Association v. Snyder,* 109 F. 2d 469 (6th Cir. 1940), and it is error to direct a verdict under such circumstances. *Lowrie v. American Surety Co. of New York,* 146 F. 2d 33 (5th Cir. 1944). When considering such a motion, the evidence as presented must be considered in its aspect most favorable to the party against whom the motion is made, with every fair and reasonable inference which the evidence justifies being considered. *Mandio v. Vibbert,* 170 F. 2d 540 (4th Cir. 1948) citing *Gunning v. Cooley,* 281 U. S. 90, 94; 50 Sup. Ct. 231, 74 L. Ed. 720 (1929).

D. Substantial and relevant evidence was presented by the appellants relating to the property values involved in this case, therefore, the amount of compensation awarded should have been left to the jury to determine.

Examination of the record shows that at least two important issues relating to the question of just compensation were the subject of conflicting evidence. These are (1) the actual market value of the property and (2) the classification of the property as residential and commercial rather than agricultural. There is a third important issue, bearing on the valuation that does not appear from the record to have been resolved. That is the date on which the valuation should have been made. These three issues will be discussed in order, separately.

(1) Actual market value.

The appellee presented two witnesses, Jose L. G. Bitanga (R. 92) and William A. Woelfl (R. 101), both of whom seem to have qualified to give opinion testimony relative to property values. While Mr. Bitanga's testimony was very general, Mr. Woelfl's was very specific. He states (R. 106, 107) his opinion of the exact value of each parcel involved, values subsequently adopted by the court.

In direct conflict to this testimony was the evidence offered by the appellant. The appellant offered three witnesses, the Honorable Jose C. Manibusan (R. 57), Frank D. Perez (R. 69), and Eduardo Calvo (R. 76). The first two of these witnesses testified in general terms, relating more to the classification of the property, but Mr. Perez, who was qualified to give opinion testimony (R. 82, 83) testified specifically as to the fair value of the property, to-wit $1.00 per square meter (R. 82). In so doing he stated the factors he takes into consideration in making an appraisal (R. 79) and the particular factors used in making this particular appraisal (R. 82). If there was nothing else in the Record, the testimony of Mr. Calvo and Mr. Woelfl make a direct conflict on the primary issue of the case, just compensation for property taken for public use.

(2) Property classification.

There is, in the Record, a good deal of testimony for both parties as to the classification of the land involved. There is direct testimony for the appellants

that the property was residential and commercial (R. 61, 63, 80, 81), and direct testimony to the contrary by appellee's witnesses (R. 94). Mr. Woelfl stated, on cross-examination that the parcels involved were "part of the Village of Barrigada" in 1949 (R. 107). These classifications were urged, of course, because of the effect each would have on determining market value.

The court, which in directing the verdict adopted Mr. Woelfl's opinion (R. 106, 107) as to the property value (R. 115), stated on page 112 of the Record:

> It should not be given as agricultural land. The government concedes that the testimony of the value is based upon the value of the lots on April 11, 1949 as residential, so the government is not insisting that these lots be valued for agricultural purposes. Mr. Woelfl's testimony is that they are residential and business.

The appellants submit that no such concession was made by the government, and that the court therefore accepted the government's valuation on an erroneous premise assuming that one of the vital issues, classification of the property, was not in issue when it in fact still was.

Appellee stated (R. 64) "these lands were all leasehold condemnations from 1946 until the fee was taken. The basis of evaluation is of farm land". Then, again (R. 64) states "the land is considered as if on the date of taking it was in the same condition as it was at the time of the lease". The only concession made was that at the time the fee was taken the property was residential and commercial (R. 65). This is not a

concession that the property values offered by appellee were based on 1949 residential and commercial values as was indicated in the above quotation by the court, and on which the court based its directed verdict.

Therefore, although Mr. Woelfl's appraisal valuation, accepted by the court, is stated to be as of the date of taking, April, 1949, it considered the land to be in the same condition as when the lease was made, that is, farm land.

(3) Time of valuation.

Throughout the record, a rapid post-war change in the classification of the property is indicated. This makes the date of valuation of the property a very important issue and one which does not seem to be resolved. The appellant, as is evident from the appraisal made by its witness (R. 82, 83) considers the date of valuation to be 1949, the date of the actual taking. Appellee insists that the date of appraisal is 1946 (R. 64) basing this on the existence of a leasehold condemnation. There is nothing in the Declaration of Taking (R. 31), the Amended Declaration of Taking (R. 14), the complaint (R. 8) or the Amended Complaint (R. 22) to indicate that the date of valuation should be any date other than the date of taking. Nor is there any evidence in the record other than the statement of the attorney for appellee (R. 64) referred to above, to indicate that there should be any other date of valuation.

Yet the court adopted the appellee's appraisal, based on 1946 values, as its own. When doing so it appeared to believe that the appraisal was based on

1949 valuation (R. 112), but on the following day the court, in instructing the jury of its decision stated, (R. 117) in discounting the appellants 1949 appraisal:

> . . . the military had taken over this agricultural area and had built temporary homes . . . in order to provide housing for the people and then had taken the title to that land three years later; (appellants' appraisal would mean) that the former owners of this agricultural land should be paid upon the basis that it was a built-up residential area.

Thus it appears that if the court was originally mistaken as to the date of valuation of appellee's appraisal, it later corrected its impression and continued to accept the same dollar values as being just compensation, even though they were based on a period three years prior to the actual taking. This was done, even though there was no evidence or other indication of the existence of a lease. Nor is there any other basis for pre-dating the valuation, and, in fact, the court made no ruling as to the basis for this action.

II.

THE ORDER DIRECTING THE VERDICT SHOULD HAVE BEEN SET ASIDE AND A NEW TRIAL GRANTED UPON APPELLANTS' TIMELY MOTION.

The same arguments stressed in I of this brief, urging that the court below erred in directing the verdict, apply here. That is, that there was sufficient

evidence to take the questions of valuation to the jury, and that the court adopted valuation figures based on an incorrect date and incorrect classification of the property as agricultural.

CONCLUSION.

Appellant respectfully submits that the trial court erred in directing the verdict and in denying the motion for a new trial, and therefore its decisions should be reversed and the case remanded for a new trial.

Dated, September 3, 1958.

Respectfully submitted,

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